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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 225, 237, 242, and 252

RIN 0750-AI01

Defense Federal Acquisition Regulation Supplement: Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States (DFARS Case 2013-D015)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to align it with revisions to the DoD Instruction on operational contract support.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2013-D015, using any of the following methods:

o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2013-D015" under the heading "Enter keyword or ID" and

selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2013-D015." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2013-D015" on your attached document.

- o E-mail: dfars@osd.mil. Include DFARS Case 2013-D015 in the subject line of the message.

- o Fax: 571-372-6094.

- o Mail: Defense Acquisition Regulations System, Attn: Ms. Meredith Murphy, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 571-372-6098; facsimile 571-372-6101.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to amend the DFARS to revise and update the prescription and the clause at DFARS 252.225-7040, currently titled "Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States," to align it with the changes in applicability, terminology, and other revisions made by Department of Defense Instruction (DoDI) 3020.41, entitled "Operational Contract Support (OCS)." The DoDI was published as an interim rule for public comment and subsequently was published as a final rule on July 1, 2012.

The revisions to DoDI 3020.41 establish policy, assign responsibilities, and provide procedures for OCS, including OCS program management, contract support integration, and integration of defense contractor personnel into contingency operations outside the United States. Additions to, and clarifications of, terminology aid in determining which groups qualify for different types of Government support and are based on improvements in practices and lessons learned in recent contingency operations.

II. Discussion and Analysis

New definitions are proposed to be added to the clause at 252.225-7040. These include "contractors authorized to accompany the Force" (CAAF), "non-CAAF," and "designated reception site." These definitions are considered important clarifications as to requirements, status, and entitlement to

use facilities. One new element of the proposed rule is the statement at paragraph (b)(3) of the clause that, "when armed for personal protection, contractor personnel are only authorized to use force for personal protection." This would not be a new policy; rather, it would be a clear, concise statement of the existing policy.

The new clause title is proposed to be "Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States," and the new clause prescription, at DFARS 225.7402-5(a), adds "As directed by the Secretary of Defense" to the list of circumstances in which the clause is applicable.

The clause addresses at paragraph (c) the types of support available for CAAF personnel and the requirement to have a letter of authorization signed by the contracting officer prior to deployment for each CAAF. In the past, the provision of non-emergency medical and dental care to CAAF personnel has generated considerable confusion. The proposed revision to paragraph (c) would make it clear that only emergency medical and dental care will be provided and only when the CAAF individual is injured while supporting applicable operations. In certain cases, non-emergency care may be provided by field hospital staff, but the contractor will be billed for that non-emergency care.

The predeployment requirements for CAAF personnel would be clarified in paragraph (e) of the clause. In the past, there was some ambiguity about which requirements could be fulfilled once the individual was in theater and which requirements had to be completed prior to deployment, i.e. during predeployment screening.

The requirements for and use of personnel data are covered at paragraph (g) of the clause. Contractors are required to use the Synchronized Predeployment and Operational Tracker (SPOT) system to enter and maintain data on their CAAF and non-CAAF personnel (as designated by USD(AT&L) or the combatant commander) supporting deployed U.S. Armed Forces outside the United States. The purpose of SPOT is to provide the Combatant Commander with accurate, real-time information on all personnel within specified geographic combatant command operations areas. In the past, some contractors did not maintain current information on their personnel in SPOT. The proposed revisions to paragraph (e) of the clause would make a contractor's on-going SPOT maintenance requirements clear and specific.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including

potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it impacts only businesses providing direct support to U.S. Armed Forces that are deployed outside the United States. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This rule proposes to update the clause at DFARS 252.225-7040 and its prescription to align the DFARS with the changes in applicability, terminology, and other revisions made by Department of Defense Instruction (DoDI) 3020.41, entitled Operational Contract Support (OCS). The DoDI "establishes policy, assigns responsibilities, and provides procedures for OCS, including OCS program management, contract support integration, and integration of defense contractor personnel

into contingency operations outside the United States..." (DoDI 3020.41, section 1.a.).

The proposed rule will impact small businesses with personnel who provide direct support to U.S. Armed Forces personnel deployed outside the United States. Given the concerted effort by the United States to procure products and services from local vendors (see, e.g., sections 841 and 842 of the National Defense Authorization Act for Fiscal Year 2013, entitled "Extension and Expansion of Authority to Acquire Products and Services Produced in Countries Along a Major Route of Supply to Afghanistan" and "Limitation on Authority to Acquire Products and Services Produced in Afghanistan," respectively.), the impact on U.S. small businesses should be minimal. DoD estimated, in its Paperwork Reduction Act estimate for SPOT, that up to 1,300 companies ultimately could be supporting U.S. Armed Forces deployed outside the United States. Approximately 20 percent of these companies are non-U.S. firms (and therefore are not categorized as either small or large), and approximately 20 percent of the U.S. companies are small businesses, i.e. approximately 200 small businesses.

However, for those small businesses that do have personnel deployed in support of U.S. Armed Forces deployed outside the United States, the recordkeeping and reporting requirements are minimal. The specific requirements are included in paragraph

(g) of the clause at DFARS 252.225-7040. The contractor is required to use the web-based Synchronized Predeployment and Operational Tracker (SPOT) system to enter and maintain the data for its CAAF and designated non-CAAF personnel supporting deployed U.S. Armed Forces outside the United States. The purpose of the SPOT system is to enable DoD to keep track of all persons deployed in contingency zones. The information must be entered in SPOT prior to deployment and must be updated during the performance period of the contract as necessary to maintain accurate, up-to-date information. Changes to status of individual contractor personnel relating to their in-theater arrival date and their duty location, to include closing out the deployment with their proper status (e.g. mission complete, killed, wounded) is annotated within the SPOT database.

The rule does not duplicate, overlap, or conflict with any other Federal rules. The requirement to use the SPOT database is not new to this case. It has been in place for several years and is applied to all sizes of businesses that have personnel deployed in a contingency operation. The SPOT database can be accessed with a laptop and is user friendly to encourage real-time updates of the information provided.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2013-D015), in correspondence.

V. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C chapter 35; however, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704-0460, entitled "Synchronized Predeployment and Operational Tracker (SPOT) System," in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 212, 225, 237, 242, and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 212, 225, 237, 242, and 252 as follows:

1. The authority citation for 48 CFR parts 212, 225, 237, 242, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212-ACQUISITION OF COMMERCIAL ITEMS

2. Section 212.301 is amended by revising paragraph (f) (xxxix) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(xxxix) Use the clause at 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, as prescribed in 225.7402-5(a).

* * * * *

PART 225-FOREIGN ACQUISITION

225.7402 [Amended]

3. Section 225.7402 heading is amended by removing the phrase "authorized to accompany" and adding the word "supporting" in its place.

4. Section 225.7402-2 is revised to read as follows:

225.7402-2 Definition.

Designated operational area is defined in the clause at 252.225-7040. See PGI 225.7402-2 for additional information on designated operational areas.

4. Section 225.7402-5(a) is revised to read as follows:

225.7402-5 Contract clauses.

(a) Use the clause at 252.225-7040, Contractor Personnel

Supporting U.S. Armed Forces Deployed Outside the United States, instead of the clause at FAR 52.225-19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for performance in a designated operational area that authorize contractor personnel to support U.S. Armed Forces deployed outside the United States in—

- (1) Contingency operations;
- (2) Humanitarian assistance operations;
- (3) Other peace operations consistent with Joint Publication 3-07.3;
- (4) Other military operations or military exercises, when designated by the combatant commander; or
- (5) As directed by the Secretary of Defense.

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PART 237—SERVICE CONTRACTING

237.171-4 [Amended]

5. Section 237.171-4(a) is amended by removing “a Force” and adding “U.S. Armed Forces” in its place.

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

242.302 [Amended]

6. Section 242.302(S-72) is amended by removing the phrase "Authorized to Accompany" and adding "Supporting" in its place.

252-SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Section 252.225-7040 is amended by-

a. Removing from the section heading the phrase "Authorized to Accompany" and adding "Supporting" in its place;

b. Removing from the clause title the phrase "Authorized to Accompany" and adding in its place "Supporting;

c. Removing the clause date (FEB 2013) and adding "(OCT 2013)" in its place;

d. Adding to paragraph (a), in alphabetical order, the definitions "contractors authorized to accompany the Force", "designated reception site", and "non-CAAF";

e. Revising paragraph (b);

f. Amending paragraph (c)(1)(ii) by removing the word "shall" and adding "will" in its place;

g. Revising paragraph (c)(2)(i);

h. Amending paragraph (c)(2)(iii) by removing the phrase "unless specified elsewhere in this contract";

i. Removing paragraph (c)(3);

j. Redesignating paragraph (c)(4) as (c)(3) and adding a new paragraph (c)(4);

- k. Amending paragraph (d)(1) introductory text by removing the phrase "authorized to accompany" and adding "supporting" in its place;
- l. Amending paragraph (d)(3) introductory text by removing the phrase "contractor employees accompanying" and adding "CAAF supporting" in its place;
- m. Amending paragraph (e)(1) introductory text by removing the phrase "personnel authorized to accompany U.S. Armed Forces" and adding "CAAF" in its place;
- n. Revising paragraph (e)(1)(ii);
- o. Amending paragraph (e)(1)(iii) by removing the last sentence in the paragraph and adding in its place "Contractor personnel shall return all U.S. Government issued identification, to include the Common Access Card, to appropriate U.S. Government authorities at the end of their deployment.";
- p. Amending paragraph (e)(1)(iv) by removing "Contractor personnel" and adding "For this purpose, CAAF" in its place and adding the word "contractor" after the word "non-DoD";
- q. Adding paragraphs (e)(2)(v) and (vi);
- r. Amending paragraph (f) introductory text by removing the words "Deployed Contractor" and adding "(CAAF)" in its place;
- s. Amending paragraph (f)(3) by-
 - i. Removing the word "Joint" and adding "designated" in its place;

ii. Removing the words "Center (JRC)" and adding "site (DRS)" in its place; and

iii. Removing "JRC" and adding "DRS" in its place.

t. Revising paragraph (g);

u. Revising paragraph (h);

v. Amending paragraph (j)-

i. In paragraph (j)(1), by removing "authorized to carry weapons, the request" and adding "authorized to carry weapons for personal protection, the request" in its place, and removing ", paragraph 6.3.4.1 or, if the contract is for security services, paragraph 6.3.5.3";

ii. By adding paragraphs (j)(3)(iv) and (v);

w. Revising paragraph (o); and

x. Revising paragraph (q).

The revisions and additions read as follows:

252.225-7040 Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States.

* * * * *

(a) * * *

Contractors authorized to accompany the Force, or CAAF, means contractor personnel, including all tiers of subcontractor personnel, who are authorized to accompany U.S. Armed Forces in applicable operations and have been afforded CAAF status through a

letter of authorization. CAAF generally include all U.S. citizen and third-country national employees not normally residing within the operational area whose area of performance is in the direct vicinity of U.S. Armed Forces and who routinely are co-located with the U.S. Armed Forces (especially in non-permissive environments). Personnel co-located with U.S. Armed Forces shall be afforded CAAF status through a letter of authorization. In some cases, Combatant Commander subordinate commanders may designate mission-essential host nation (HN) or local national (LN) contractor employees (e.g., interpreters) as CAAF. CAAF includes contractors previously identified as contractors deploying with the U.S. Armed Forces. CAAF status does not apply to contractor personnel in support of applicable operations within the boundaries and territories of the United States.

* * * * *

Designated reception site means the designated place responsible for the reception, staging, integration, and onward movement of contractors deploying during a contingency. The designated reception site includes assigned joint reception centers and other Service or private reception sites.

* * * * *

Non-CAAF means personnel who are not designated as CAAF, such as local national (LN) employees and non-LN employees who are permanent residents in the operational area or third-country

nationals not routinely residing with U.S. Armed Forces (and third-country national expatriates who are permanent residents in the operational area) who perform support functions away from the close proximity of, and do not reside with, U.S. Armed Forces.

Government-furnished support to non-CAAF is typically limited to force protection, emergency medical care, and basic human needs (e.g., bottled water, latrine facilities, security, and food when necessary) when performing their jobs in the direct vicinity of U.S. Armed Forces. Non-CAAF status does not apply to contractor personnel in support of applicable operations within the boundaries and territories of the United States.

* * * * *

(b) General. (1) This clause applies when Contractor personnel performing in a designated operational area are supporting U.S. Armed Forces deployed outside the United States in—

- (i) Contingency operations;
- (ii) Humanitarian assistance operations;
- (iii) Other peace operations;
- (iv) Other military operations or military exercises, when designated by the Combatant Commander; or
- (v) As directed by the Secretary of Defense.

(2) Contract performance in support of U.S. Armed Forces deployed outside the United States may require work in dangerous or austere conditions. Except as otherwise provided in the contract,

the Contractor accepts the risks associated with required contract performance in such operations.

(3) When authorized in accordance with paragraph (j) of this clause to carry arms for personal protection, Contractor personnel are only authorized to use force for individual defense.

(4) Unless immune from host nation jurisdiction by virtue of an international agreement or international law, inappropriate use of force by contractor personnel authorized to accompany the U.S. Armed Forces can subject such personnel to United States or host nation prosecution and civil liability (see paragraphs (d) and (j)(3) of this clause).

(5) Service performed by Contractor personnel subject to this clause is not active duty or service under 38 U.S.C. 106 note.

(c) * * *

(2)(i) Generally, CAAF will be afforded emergency medical and dental care if injured while supporting applicable operations. Additionally, non-CAAF employees who are injured while in the vicinity of U.S. Armed Forces will normally receive emergency medical and dental care. Emergency medical and dental care includes medical care situations in which life, limb, or eyesight is jeopardized. Examples of emergency medical and dental care include examination and initial treatment of victims of sexual assault; refills of prescriptions for life-dependent

drugs; repair of broken bones, lacerations, infections; and traumatic injuries to the dentition. Hospitalization will be limited to stabilization and short-term medical treatment with an emphasis on return to duty or placement in the patient movement system.

* * * * *

(4) Unless specified elsewhere in this contract, the Contractor is responsible for all other support required for its personnel engaged in the designated operational area under this contract.

* * * * *

(e) * * *

(1) * * *

(ii) All CAAF deploying in support of an applicable operation are medically, dentally, and psychologically fit for deployment and performance of their contracted duties. All CAAF must meet the minimum medical screening requirements, including theater-specific medical qualifications as established by the geographic Combatant Commander (as posted to the Geographic Combatant Commander's website or other venue) and have received all required immunizations as specified in the contract. During predeployment processing, the Government will provide, at no cost to the Contractor, any military-specific immunizations and/or medications not available to the general public. All other

immunizations must be obtained prior to arrival at the deployment center. CAAF and selected non-CAAF must bring to the operational area a current copy of the Public Health Service Form 791, "International Certificate of Vaccination."

* * * * *

(2) * * *

(v) Such employees are required to report offenses alleged to have been committed by or against Contractor personnel to appropriate investigative authorities.

(vi) Such employees will be provided victim and witness protection and assistance.

* * * * *

(g) Personnel data. (1) The Contractor shall use the Synchronized Predeployment and Operational Tracker (SPOT) web-based system, to enter and maintain the data for all CAAF and, as designated by USD(AT&L) or the Combatant Commander, non-CAAF personnel supporting U.S. Armed Forces deployed outside the United States as specified in paragraph (b)(1) of this clause.

(2) The Contractor shall enter the required information about their contractor personnel prior to deployment and shall continue to use the SPOT web-based system at <https://spot.altess.army.mil/privacy.aspx> to maintain accurate, up-to-date information throughout the deployment for all Contractor personnel. Changes to status of individual

Contractor personnel relating to their in-theater arrival date and their duty location, to include closing out the deployment with their proper status (e.g., mission complete, killed, wounded) shall be annotated within the SPOT database in accordance with the timelines established in the SPOT business rules.

(h) Contractor personnel. (1) The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any Contractor personnel who jeopardize or interfere with mission accomplishment or who fail to comply with or violate applicable requirements of this contract. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract, including the Termination for Default clause.

(2) The Contractor shall identify all personnel who occupy a position that the Contracting Officer has designated as mission essential and ensure the continuity of essential Contractor services during designated operations.

(3) The Contractor shall ensure that Contractor personnel follow the guidance at paragraph (e) (2) (v) of this clause and any specific Combatant Commander guidance on reporting offenses alleged to have been committed by or against Contractor personnel to appropriate investigative authorities.

* * * * *

(j) * * *

(3) * * *

(iv) Comply with applicable Combatant Commander and local commander force-protection policies.

(v) Understand that the inappropriate use of force could subject them to U.S. or host-nation prosecution and civil liability.

* * * * *

(o) Mortuary affairs. Contractor personnel who die while in support of the U.S. Armed Forces shall be covered by the DoD mortuary affairs program as described in DoD Directive 1300.22, Mortuary Affairs Policy, and DoD Instruction 3020.41, Operational Contractor Support.

* * * * *

(q) Subcontracts. The Contractor shall incorporate the substance of this clause, including this paragraph (q), in all subcontracts when subcontractor personnel are supporting U.S. Armed Forces deployed outside the United States in—

- (1) Contingency operations;
- (2) Humanitarian assistance operations;
- (3) Other peace operations;
- (4) Other military operations or military exercises, when designated by the Combatant Commander; or

(5) As directed by the Secretary of Defense.

(End of clause)

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